IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4957 of 2006

Date of Decision: 26.09.2006

M/s Gilco Auto Engineers Pvt. Ltd. ...Petitioner

Vs.

Jagdish Virinder Singh ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Anil Kshetarpal, Advocate,
for the petitioner.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 5.9.2006 passed by the learned Rent Controller, Union Territory, Chandigarh declining an application moved by the petitioner under Order 7 Rule 11 (d) read with Section 151 of the Code of Civil Procedure (for short the Code) for rejection of the rent petition.

The petitioner by way of application under Order 11 Rule 7 read with Section 151 of the Code had sought the rejection of the petition on the ground that as per the notification issued by the Union Territory, Chandigarh dated 7.11.2002 the buildings, the rent whereof was more than Rs.1500/- per month were taken out of the purview of the Punjab Urban

Rent Restriction Act, 1949 (for short the Act) and therefore, the present rent petition was not maintainable.

The learned Rent Controller rejected the application by observing that the notification issued by Union Territory, Chandigarh was under challenge before the Hon'ble Supreme Court and passing of final orders by the Civil Court have been stayed.

Learned Rent Controller rejected the application on account of the pendency of the matter before the Hon'ble Supreme Court and accordingly directed the petitioner to file written statement.

Learned counsel for the petitioner has challenged the order passed by the learned Rent Controller primarily on the ground that the pendency of challenge to the notification did not give jurisdiction to the learned Rent Controller to proceed with the matter. The other contention of the learned counsel for the petitioner was that rent petition filed by the respondent herein was actuated with mala fides as the landlord/respondent had sought rent w.e.f. 1.6.1998 as there is no limitation under the Act whereas in case the landlord/respondent was to file civil suit then he could have claimed rent only for three years as the balance rent would be barred by limitation.

The next contention of the learned counsel for the petitioner is that in case the impugned order is allowed to stand then in view of the judgment of Hon'ble Supreme Court in **Rakesh Wadhawan and others Vs. M/s Jagdamba Industrial Corporation and others JT 2002 (Suppl.-I) SC** 11 the petitioner herein would be bound to pay the rent claimed and assessed by the learned Rent Controller and on the failure to do so there would be automatic eviction of the petitioner.

I have considered the arguments raised by the learned counsel for the petitioner and find no force in the same.

Once the notification is under challenge and the Hon'ble Supreme Court has stayed the passing of final order, this creates shadow of clouds on the jurisdiction of the Civil Court to adjudicate the matter finally and thus, there was no reason for the learned Rent Controller to stay the petition for ejectment on the ground of the notification which is under challenge. Even otherwise, the provisions of the Code are not applicable to the rent proceedings and therefore, the petitions under Order 7 Rule 11 of the Code were itself not maintainable and the petitioner could only challenge the jurisdiction of the learned Rent Controller by filing the written statement and get adjudication on that fact. Thus, prima facie the application as filed by the petitioner was not maintainable.

The other contention of the learned counsel for the petitioner that the petition has been filed mala fide, cannot be accepted. The stand taken by the petitioner is dishonest as he wants to avoid the payment of rent due to the landlord in the garb of application under Order 7 Rule 11 of the Code.

For the reasons stated above, I find that there is no illegality in the order passed by the learned Rent Controller nor there is an error in exercise of jurisdiction which may call for interference by this Court in revisional jurisdiction under Article 227 of the constitution of India.

Dismissed.

(Vinod K.Sharma)
Judge

26.09.2006
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